WP(C) 4665/2007

BEFORE

THE HON'BLE MR JUSTICE AMITAVA ROY

The petitioner, a driver with the Directorate of Health Services, Assam (hereafter for short referred to as the 'Directorate'), has challenged his order of transfer therefrom to the establishment of the Joint Director, Health Services, Nalbari, by the order dated 27.08.2007, of the Director of Health Services, Assam.

This Court on the date of motion by order dated 17.09.2007, having regard to the post that the petitioner holds and the pleaded stand that he had not been released pursuant to the order impugned, stayed the operation thereof, till the next date fixed. The learned Standing counsel, Health & Family Welfare Department, Assam, has produced the records along with the parawise comments. The learned counsel for the parties, therefore, have been heard and this petition is being disposed of at the motion stage.

2. I have heard Mr. P Upadhaya, learned counsel for the petitioner and Ms. A Verma, learned Standing counsel, Health & Family Welfare Department, Assam.

3. It is the petitioner's case that he joined the Officer of the Joint Director, Health Services, Kamrup as a driver on 23.09.1981 and on his transfer in the year 1994, was posted in the Office of the Director of Health Services, Assam, Guwahati, where he has been serving till date. He has claimed that he has been rendering his services to the satisfaction of all concerned. His wife is also serving in the Gauhati Medical College and Hospital, Assam as a Grade-IV employee and, therefore, both of them are in the rolls of the Department of Health and Family Welfare, Government of Assam. By the impugned order as above, he has been transferred to Nalbari and on the receipt thereof, he approached the Directorate of Health Services, Assam and requested him to withdraw the same, highlighting his personal difficulties. The petitioner has referred to the office memorandum No. ABP 246/84/Pt.1/8, dated 21.05.1987, of the Personnel (B) Department, Government of Assam, which he construes to require both the spouses, in the same State service to be posted at the same station. The petitioner has indicated that in case, the respondents insist to transfer him, his wife should also be posted along with him at the same place. He has mentioned about his wife's illness demanding constant medical attention. It has been alleged that the impugned order has been passed to accommodate another driver in his post and that the arrangement has been effected on political interventions.

4. The petitioner by an additional affidavit, has further contended that the post to which he sought to be transferred, is non-existent as apparent from the letter dated 10.09.2007, of the Joint Director of Health Services, Nalbari. He has further stated that he is the Secretary of the Hengrabari Committee of Government Drivers' Association, Kamrup and Assam Secretariat and as he holds a key post therein, he cannot be transferred without being afforded a reasonable time to arrange for his replacement, as is stipulated in the Office Memorandum No. ABP 232/73/172, dated 24.05.79, of the Government of Assam. He has also contended that the impugned order, is punitive and, therefore, is not sustainable, the same having been passed without providing him a reasonable opportunity of hearing.

5. No affidavit-in-opposition has been filed. However, the parawise comments submitted by the Director of Health Services, Assam for the perusal of this Court, discloses the stands of the respondents. According to them, the petitioner joined the Office of the Director of Health Services, Assam on 16.09.2007. His claim of rendering sincere and dedicated services, has been denied with the imputation that he used to disobey the orders of the superior officers for which the concerned authorities though, had decided to take action against him, restrained from doing so in view of the apologies tendered. The respondents admit that his wife is serving as a Grade-IV employee in the Gauhati Medical Colle

ge and Hospital, which they maintain is under a separate Directorate of Medical Education, Assam. The parawise comments also disclose that the petitioner is ir regular in attending his duties and thus often found unavailable when his servic es are required and that therefore, he has been transferred of his present post for smooth functioning of the Office. According to the respondents, the petitio ner has been released pursuant to the order of transfer dated 31.08.2007. They have maintained that there is no bar to transfer a driver of the Directorate to other districts, as the service conditions are not altered or adversely affected thereby. The parawise comments further disclose that the Joint Director of the Health Services, Nalbari, had filled up the post of driver in his establishment , which according to the Directorate of Health Services, Assam, was without any authority of law and that following the cancellation of such arrangement, the in cumbent has been released and that the petitioner can be accommodated there. It is the contention of the respondents that the petitioner is a Secretary of the sub unit of the Drivers' Association of the Directorate of Health Services and n ot an office bearer of the Drivers' Association, Kamrup and Assam Secretariat, a s claimed by him. They have contended that the petitioner, therefore, is not a key office bearer within the meaning of letter No. ABP.261/81/66, dated 03.10.19 86 of the Personnel (B) Department, Government of Assam. The respondents have d ismissed the assertion of penal transfer as baseless. They have further maintai ned that office memorandum dated 21.05.1987, contemplating posting of both the s pouses at the same station, has since been cancelled by the office memorandum da ted 22.06.1992.

6. Mr. Upadhaya, has argued that the impugned order of transfer is not sustainable in law being neither in public interest nor in administrative ex igency. The learned counsel reiterated that the petitioner's transfer is puniti ve in nature and that he being the Secretary of the Hengrabari Committee of Gove rnment Drivers' Association, Kamrup and Assam Secretariat, cannot be subjected t o transfer in the manner done. Mr. Upadhaya, in the alternative submitted that in terms of the office memorandum dated 21.05.1987, the petitioner's wife being also in the same State service, he (petitioner), in isolation, cannot be posted out to a different station.

7. Ms. Verma, in reply, has argued that the petitioner's transfer i s in institutional interest and that the charge of extraneous consideration or f avouritism is unfounded. According to her, the petitioner, is not a key office bearer of a recognized association and, therefore, the constraints in transferri ng such an incumbent, are not attracted to his case. While, contending that the reliance on the office memorandum dated 21.05.1987, is misconceived in view of its cancellation, Ms. Verma, has argued that transfer being an incident of servi ce, no interference, is called for with the impugned order. She explained that the appointment to the post of driver in the establishment of the Joint Director of Health Services, Nalbari, as communicated by the letter dated 10.09.1997, of the said authority, has since been cancelled and that there is no impediment on the part of the petitioner to join the said office. The relevant orders to the above effect, have been appended to the parawise comments which amongst others, reveal that by the order dated 17.09.2007 of the Director of Health Services, A ssam, the transfer of one Sri Lohit Deka, to the establishment of Joint Director , Health Services, Nalbari, has been cancelled and that Sri Deka had been releas ed therefrom on 20.09.2007.

8. The competing pleas of the parties have been duly considered. S ignificantly, though, a passing reference has been made in the petition indicati ng favouritism and political interference, in absence of material facts and the essential pleadings, the same cannot be entertained. Though, in course of the h earing, the letter dated 10.09.2007 of the Joint Director, Health Services, Nalb ari, indicating absence of vacant post of driver in his establishment was produc ed before this Court, it has been clarified in the parawise comments of the resp ondents that such an eventuality developed in view of an unauthorized appointmen

t of a driver by the said authority (Joint Director, Health Services, Nalbari), and that the said appointment having been cancelled and the incumbent released, the post is available to accommodate the petitioner. The contention that the petitioner has been transferred to a non-existent post therefore, is, unconvincing.

9. The office memorandum dated 24.05.1979, of the Personnel (B) Department, pertaining to the transfer of office bearers of recognized associations, per se, do not totally prohibit their transfer and only underlines the requirement of affording reasonable time to the association to arrange for the replacement in case of such an eventuality.

10. A perusal of the official records being File No. HSE/255/06, do not demonstrate that the petitioner's transfer has been prompted by any extraneous or irrelevant consideration. Neither do the records disclose that the same had been as a punitive measure, nor any trace of political interference is decipherable as well. There is, therefore, no justifiable reason to hold that the impugned order is either in contravention of any law, or professed norm or is impelled by bias or mala fide.

Transfer being an incident of service, a margin of discretion in the departmental authorities in effecting suitable placements to cater to the organizational exigencies has to be acknowledged for ensuring an orderly conduct of the departmental affairs. Unless, the exercise of discretion displays patent arbitrariness, unreasonableness and unfairness, no interference in the exercise of judicial review, is warranted. The facts of the instant case, do not proffer any ground to return such a finding. The petition being without any merit, is dismissed.

The interim order stands vacated. No costs.